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Letter dated 27 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 25 April 2003 (S/2003/476).

The Counter-Terrorism Committee has received the attached third report from the Republic of Lithuania submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 19 August 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Lithuania to the United Nations addressed to Chairman of the Counter-Terrorism Committee

I have the honour to submit the supplementary report of the Republic of Lithuania to the observations received on 2 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) (see enclosure).*

(*Signed*) Mr. Andrius **Namavičius**
Chargé d'affaires a.i.
Deputy Permanent Representative of the Republic of Lithuania
to the United Nations

* Annexes are on file with the Secretariat and are available for consultations.

Enclosure

Supplementary Report of the Republic of Lithuania to the observations received on 2 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001)

1.2 It is to be noted that the Draft Law on the Amendment of the Law on the Prevention of Money Laundering has been drafted. The above-mentioned Draft Law provides for the possibility to freeze suspicious accounts in order to make combat against the financing of terrorism more effective. Paragraph 2 of Article of the Draft Law provides for the definition of the financing of terrorism: "The financing of terrorism means the financing of or other material support to the deliberate activities performed by a person or a group of persons against one or a few states, state institutions or residents with the purpose of intimidating them, and breaching or destroying the political, economic or social structures of a state".

Paragraph 6 Article 6 of the Draft Law defining the competence of the Financial Crime Investigation Service in implementing preventive measures against money laundering provides that the Financial Crime Investigation Service shall have the right to suspend for 48 hours the conducted monetary transactions or concluded deals if a suspicion arises that these may be related to money laundering or the financing of terrorism.

An interim limitation of ownership right aimed to ensure a possible civil action or property confiscation is provided for in Article 151 of the Code of Criminal Procedure of the Republic of Lithuania that took effect from May 1, 2003. An interim limitation of ownership right may be imposed in respect of following persons: 1) a suspect; 2) a natural person who, under legislation, bears material responsibility for the actions of a suspect; 3) the natural persons in possession of property derived or acquired in a criminal way; 4) a legal person, in order to ensure a possible civil claim or property confiscation. An interim limitation of ownership right may be imposed by decision of the prosecutor, in order to ensure an effective reaction by law enforcement institutions to a possible squandering of such property or transfer to other persons. In addition, under Article 72 of the Criminal Code, the property liable to confiscation includes the instrument, means (including financial resources) or result of a crime. Such property may be also confiscated from third persons where they, while acquiring the property, knew or could and had to know that the property concerned could be used for the perpetration of a serious or especially serious crime, or was derived from criminal activity.

Chapter 5 of Article 250 "Act of Terrorism" in the Criminal Code qualifies the founding a group of accomplices or an organised group for the actions listed in this article, involvement in the actions of and financing of this group, or providing material or other support thereto as a serious crime. Chapter 6 of the above article qualifies the founding of a terrorist group whose goals are intimidating people through the actions laid down in Article 250 of the Criminal Code, or raising an illegitimate demand that the state, a state institution or an international organisation carry out certain actions or refrain from them, as well as involving in and financing of the activities of such a group, or providing material or other support to such a group as an especially serious crime. Complicity (aiding and abetting), preparation for or attempt to perform the above actions are also qualified as a crime.

The aforementioned provisions create legal preconditions for an interim limitation of ownership right with respect to the persons who set up or finance terrorist organisations or actions, are involved in their activities, and aid and abet these actions, as well as with respect to other persons who have knowledge of or could and had to know that the property they possess is or could be used in performing the above actions. Accordingly, such kind of an interim limitation of ownership right may also be imposed on the persons who dispose legitimately of available resources that are not yet used specifically for terror acts but only for the founding or financing of a terrorist organisation.

When investigation of a criminal action and ascertaining that the property concerned was an instrument, means or result of a crime is completed, this property shall be liable to confiscation (Paragraph 1 Chapter 1 Article 94, the Code of Criminal Procedure).

1.3. – 1.4 The Draft Amendment to Resolution No. 1381/9 "On the Approval of Criteria for Qualifying a Monetary Transaction as Suspicious" of December 11, 1997 prepared by of the Government of the Republic of Lithuania and the Bank of Lithuania Board describes a criterion related to the suppression of the financing for terrorism, which indicates that a monetary transaction shall be regarded as suspicious provided the identification data of the customers or customer agents (where a monetary transaction is carried out via an agent) or the entity to benefit from the conducted monetary transaction coincide with the data available on the lists furnished by the law enforcement bodies of foreign states or by international organisations.

In pursuit of implementing preventive measures against the financing of terrorism, on October 24, 2002 the Bank of Lithuania Board adopted Resolution No. 134, which approved the Methodological Recommendations for Credit Institutions in which Paragraph 15 indicates that credit institutions, while checking the identity of a customer, shall pay special heed to following customers:

1) to the customers of a credit institution who come from the countries placed on a FATF-compiled list of con-cooperative states and territories, and to the monetary transactions conducted by these persons or in favour of them (the updated list of non-cooperative states and territories is available in the FATF official homepage http://www.fatf-gafi.org);

2) to the fact whether the customer of a credit institution is not included in the United Nations Security Council-compiled list of the persons related to terrorism (the updated list of non-cooperative states and territories is available in the UNSC official homepage http://www.un.org/Docs/sc/committees);

3) the identification documents submitted by persons without citizenship and foreigners.

Article 151 of the Code of Criminal Procedure stipulates an interim limitation of ownership right with the purpose of ensuring a civil claim or a possible property confiscation. Article 72 of the Criminal Code prescribes property confiscation.

As mentioned previously, Article 250 "Act of Terrorism" and other relevant articles of the Criminal Code prescribe the responsibility for terrorist crimes. In accordance with these rules, an interim limitation of ownership right may also be imposed on the property of the terrorists and terrorist organisations excluded from a list drawn up by Resolution No 1267 (1999) of the Security Council, meanwhile, after investigation of a criminal action and handing down a ruling, this property may be subject to confiscation if it was the instrument, means or result of a crime.

The Ministry of Justice of the Republic of Lithuania pinpoints to the amendment of the Resolution "On the Approval of Criteria for Qualifying a Monetary Transaction as Suspicious" of the Government of the Republic of Lithuania of May 15, 2003, which designed to harmonise this Resolution with the Law on the Prevention of Money Laundering and with the UN Convention for the Suppression of the Financing of Terrorism. The aforementioned resolution defines that a monetary transaction shall be regarded as suspicious provided the identity of the customer, customer agent (where a monetary transaction is conducted via an agent) or the entity to benefit from the conducted monetary transaction coincide with the data available on the lists of terrorism-related persons furnished by responsible institutions of foreign states or international organisations.

Also, it should be noted that on October 24, 2002 the Bank of Lithuania Board adopted the Resolution "On Methodological Recommendations for Credit Institutions Concerning the Prevention of Money Laundering", which advises credit institutions to pay particular attention to the fact whether the customer of a credit institution is on a list of terrorism-related persons, drawn up by the United Nations Security Council.

Ministry of Justice of the Republic of Lithuania notes the fact that the Draft Law on the Amendment of the Republic of Lithuania Law on the Prevention of Money Laundering is in a conclusive phase of drafting. This document defines new provisions that to deal with the financing of terrorism. Article 8 in this Draft Law stipulates that given credit and financial institutions and other entities have knowledge of or suspect that the monetary transaction conducted by their customer may be related to money laundering or the financing of terrorism they must suspend such a transaction and, without delay, report to the Financial Crime Investigation Service the data attesting the customer's identity and the information referred to in this Law, regardless of the sum of the monetary transaction. The credit and financial institutions and other entities may resume the suspended monetary transaction only upon permission of the Financial Crime Investigation Service. In the event the above permission is not issued within 48 hours after the information was submitted the suspended transaction might be conducted.

Article 14 of the above mentioned Draft Law also provides that credit and financial institutions and other entities shall establish respective internal control procedures which would prevent the conducting of monetary transactions related to money laundering and financing of terrorism.

The Republic of Lithuania does not have the legislation providing for the possibility to attach the funds of permanent and non-permanent residents of the country, and to place under arrest the persons and business entities suspected of ties with terrorists where the funds are legitimate and (not yet) used for acts of terrorism. It is to be noted that Articles 1941 1942 and 195 of the Code of Criminal Procedure of the Republic of Lithuania are no longer effective. Presently an interim limitation of ownership rights is provided for by Article 151 of the Code of Criminal Procedure of the Republic of Lithuania, which provides for the possibility to apply this measure where a person is in possession of the property liable to confiscation or the property needed to pay a civil claim. In conformity to Article 72 of the Criminal Code of the Republic of Lithuania, the property liable to confiscation includes only the instrument and means of a crime, or the result of criminal activity.

1.5 The control mechanism for the organisations seeking or claiming that they seek charity-social goals is laid down in the Republic of Lithuania Law on Charity and Sponsorship (Official Journal., 2000, No. 61-1818). Article 12 of the Law defines the charity and sponsorship accounting, prescribing the obligation for both suppliers and recipients thereof to conduct accounting and submit data to territorial tax inspectorates. Article 13 of the Law identifies the institutions in control of charity and sponsorship activities and competence thereof, while Article 15 in the above mentioned law prescribes the procedure for annulling the status of a sponsorship recipient upon recommendation of a control institution. This law excludes specific provisions related to the financing of terrorism.

1.6 Again is to be noted that the Bank of Lithuania does not possess information about the existence of informal banking systems in the Republic of Lithuania. Article 3 of the Law on Commercial Banks of the Republic of Lithuania stipulates that it shall be prohibited to engage in banking activities without a license of the Bank of Lithuania. Article 43 of the Law on the Bank of Lithuania provides that it shall be prohibited to engage in the activities of credit institution without a license or permit of the Bank of Lithuania.

Article 202 "Illegal Engagement in Economic, Commercial, Financial or Professional Activities" of the Criminal Code of the Republic of Lithuania, which took effect on May 1, 2003, indicates that the person who has undertaken the economic, commercial, financial or professional activities on a large scale or for business purposes without holding a license (permit) required for these activities, or in some other illegitimate way, shall be inflicted a penalty in the form of public works or a fine, limitation of freedom, or deprivation of freedom up to 2 years. Those who have been involved in banned economic, commercial or professional activities shall be sentenced to deprivation of freedom up to 2 years. A legal person shall be held liable for the activities listed in the above article as well.

A Draft Resolution of the Government of the Republic of Lithuania on the Amendment of Resolution No. 1411 "On the Approval of Criteria for Qualifying a Monetary Transaction as Suspicious", submitted to the Government for approval. The Draft Resolution is to be amended with Paragraph 1.18: "the identification data of the customer, customer agent (where a monetary transaction is conducted via an agent) or the entity to benefit from the monetary transaction coincide with the data available on the lists of terrorism-related persons submitted by responsible institutions of foreign states and international organisations".

Under the existing legislation, there are no legitimated alternative agencies engaged in remittances in the Republic of Lithuania, to which the means and criteria prescribed by the Republic of Lithuania Law on the Prevention of Money Laundering do not apply.

1.7 The draft conception on the prevention of terrorism has been submitted to the National Security and Defence Committee under the Seimas (Parliament) of the Republic of Lithuania.

1.8 Lithuania has fully acceded to all remaining multilateral UN instruments regulating activities of international community in the combat against terrorism (the last

document, ratified by the Lithuanian Parliament was the UN Convention for the Suppression of the Financing of Terrorism (December 3, 2002)).

The ratification of the UN (1997) Convention on the Suppression of Terrorist Bombings by the Lithuanian Parliament will enable to complete fully the accession of the country to international instruments against terrorism:

The Ministry of Justice of the Republic of Lithuania informs that in 2002 the four following international instruments related to fight terrorism were ratified:

December 3, 2002 – the Seimas of the Republic of Lithuania ratified (1999) International Convention for the Suppression of the Financing of Terrorism;

September 9, 2002 – the Seimas of the Republic of Lithuania ratified (1973) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons;

November 5, 2002 – the Seimas of the Republic of Lithuania ratified (1988) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, which became effective from April 30, 2003;

November 5, 2002 – the Seimas of the Republic of Lithuania ratified (1988) Convention the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, which came into force on April 30, 2003.

1.9 The Republic of Lithuania has acceded to various international and regional treaties targeted combat terrorism. Among these are the International Convention Against the Taking of Hostages, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, the Convention for the Suppression of Unlawful Seizure of Aircraft, and the International Convention for the Suppression of the Financing of Terrorism, the Council of Europe (1997) Convention on the Suppression of Terrorism. The latter convention gives a list of criminal activities, which the Republic of Lithuania is obligated not to regard as political ones.

Furthermore, it is worth noting that on April 16, 2003 the Republic of Lithuania signed the EU Accession Treaty, under which the Republic will assume all EU commitments from May 1, 2004, including the current and future commitments to extradite or punish persons for terrorist crimes. For instance, the procedure of the persons' handover under the European arrest warrant, which will become mandatory for the Republic of Lithuania from May 1, 2004, excludes the traditional extradition right and the exception for political crimes, but is limited to the provision common for EU Member States on the non-handover of the persons facing persecution because of their political views or beliefs.

Paragraph 3 Chapter 3 of Article 9 in the Criminal Code does not provide for a strict ban to extradite the persons who have committed political crimes but leaves the issue to discretion of the court.

Chapter 4 in the above mentioned article indicates that the Republic of Lithuania shall not grant asylum and persons shall be inflicted punishment for the criminal activities perpetrated abroad which are listed in Article 7 of the Criminal Code of the Republic of Lithuania, including the crimes referred to in Article 216 of the Code (legitimisation of cash or property derived from criminal activity), Article 250 (act of terrorism), Article 251 (seizure of an aircraft, vessel or fixed platform on the continental shelf), Article 252 (taking of human hostages), and Articles 256 to 257 (illegitimate treatment of radioactive substances). Accordingly, a person irrespective of his/her

citizenship or the place of a crime would be denied asylum and imposed punishment pursuant to the criminal laws of the Republic of Lithuania given the person in question has committed a criminal activity, according to the international obligations of the Republic of Lithuania.

In view of this, the case "terrorist crime of political character" would hardly be practically possible under the international treaties, laws and other legislation of the Republic of Lithuania. Should a person be not extradited in connection with some committed criminal activity, which a court of the Republic of Lithuania would qualify as "a political crime", the Republic of Lithuania still is not entitled to grant asylum to such a person and must punish him/her in the event his/her committed crime corresponds to the signs of terrorist crimes set forth in Article 7 of the Criminal Code of the Republic of Lithuania.

It should be added that over the recent four years the Republic of Lithuania, pursuant to (1957) Convention on Extradition, has extradited to foreign states 33 persons but never exercised the exception for political crimes.

The European Convention on the Suppression of Terrorism adopted on January 27, 1977 indicates that the parties shall not treat terrorism-related crimes as those of political character. The ratified international treaties form part of Lithuania's legal system therefore the country does not regard the terrorism-related crimes as those of political character. Lithuania thus could extradite a foreigner who has been located in Lithuania and charged with a terrorist crime of political character.

1.10 We hereby report that presently, on the issue of asylum granting in the Republic of Lithuania, the following anti-terror measures are being implemented:

– fingerprints of the foreigners who have filed applications for the refugee status in the Republic of Lithuania are taken to be checked against the database run by the Criminal Investigations Centre under the Lithuanian Criminal Police Bureau;

– the foreigners who have filed applications for the refugee status or for the permit of temporary settlement in the Republic of Lithuania for humanitarian reasons are checked in the International Relations Service under the Lithuanian Criminal Police Bureau and against the databases of the State Security Department.

– the permits of residence in the country (both permits of permanent residence which are issued to the foreigners recognised as refugees and permits of temporary settlement for humanitarian reasons) are issued after assessing the State Security Department's conclusions;

– if the presence of the foreigner who has filed an application for the refugee status in the Republic of Lithuania and has been denied such a status in the country threatens the state security or public order interests, the person is detained by court decision until the ruling on his/her deportation from the country is carried into effect;

– in deporting the foreigners denied both the refugee status in the Republic of Lithuania and the permit of temporary settlement in the Republic of Lithuania for humanitarian reasons, the aforementioned foreign nationals shall be placed on a persona non grata list of the Republic of Lithuania;

Pursuant to Article 4 of the Republic of Lithuania Law on the Refugee Status (Official Journal., 1995, No. 63-1578; 2000, No. 56-1561), the refugee status shall be denied to the foreigner who conforms to the definition of a refugee and there are grounds to believe that, prior to the arrival in the Republic of Lithuania, he/she had committed a serious non-political crime. In accordance with the 1997 European

Convention on the Suppression of Terrorism, the conducting of and involvement in acts of terrorism, also the attempt to conduct an act of terrorism are qualified as serious non-political crimes. Under the Criminal Code of the Republic of Lithuania, complicity in a crime includes the perpetration, organisation and guidance of a crime, and aiding and abetting a crime (giving advice and means, removing obstacles etc). For this reason the persons who provide grounds to believe that they have committed, participated in or attempted to conduct acts of terrorism, also the persons who have financed, plotted and supported acts of terrorism, or have harboured the aforementioned persons may be denied the refugee status in the Republic of Lithuania.

A working group established by Decree of the Minister of Interior of the Republic of Lithuania is presently in process of drafting the Draft Law on the Legal Status of Foreigners. In a bid to avert possible abuse cases in the procedures of granting asylum and immigration into the Republic of Lithuania, the provisions of both the Republic of Lithuania Law on the Legal Status of Foreigners and the Republic of Lithuania Law on the Refugee Status, which are being aligned with the international obligations of the Republic of Lithuania and with the European Union's acquis, are transposed into the above mentioned Draft Law. The European Union's immigration and asylum policy is harmonised in efforts to tighten the procedures and increase transparency thereof, therefore, the passed legislation of the Republic of Lithuania must inevitably comply with these requirements.

The Draft Law in question prescribes the procedure for the arrival, presence and residence of foreigners, asylum granting, integration and naturalisation, and departure procedure, as well as the procedure of lodging a complaint against the decisions on the legal status of foreigners, and governs other issues concerning the legal status of foreigners in the Republic of Lithuania.

In deporting the foreigners denied asylum in the Republic of Lithuania (this covers both the denied refugee status and the decline to issue the permit of temporary settlement in the Republic of Lithuania for humanitarian reasons), the Republic of Lithuania Law on the Legal Status of Foreigners is observed. The above-mentioned provisions on the denial of the refugee status will remain in the Draft Law that is under way.

The Draft Law, like the effective Republic of Lithuania Law on the Legal Status of Foreigners, provides that in case the residence of a foreigner in the Republic of Lithuania poses a threat to the state security, public order or health, the person shall be denied the permit to reside in the Republic of Lithuania or the permit extension, and thus shall be deported from the Republic of Lithuania.

The aforementioned Draft Law includes the following provisions:

– the foreigner who has not been allowed the entry to the Republic of Lithuania, is bound to depart, has been deported from the Republic of Lithuania, repatriated to the country of origin or whose arrival in or presence in the Republic of Lithuania would pose a threat to the state security or public order, may be denied the entry to the Republic of Lithuania for a definite or indefinite period;

– if a foreigner lodges a complaint over the decision adopted pursuant to this Law, the implementation of the decision may not be suspended in the event the deportation is based on a threat posed by the presence of the foreigner in the Republic of Lithuania to the state security and public order or health.

The Draft Law on the Legal Status of Foreigners reads that a foreigner shall not be deported from the Republic of Lithuania to the country where he/she will be exposed

to torture, cruel and inhuman treatment or humiliation of his/her dignity, or will be punished in this manner i.e. where the non-repatriation principle is applicable to him/her. Besides, it is prescribed that a foreigner shall not be deported or repatriated to the country in which a threat for his/her life or freedom exists, or where he/she may face persecution because of racial origin, religion, nationality, membership in a certain social group, or for political reasons, or to the country from which he/she may be later deported to such a country. But this provision may not apply to the foreigner who, for valid reasons, is regarded as threatening the state security or, under the effective court ruling, is sentenced for a serious or especially serious crime and poses a threat to society.

In addition we hereby inform that the State Border Protection Service at the Ministry of the Interior, while conducting the identification of the persons crossing the state border, learns the purpose of arrival, as to who provides material-technical support to the persons coming illegally into the country (who finances travels, provides transport, helps cross illegally the state border with forged documents etc). The Foreigners Registration Centre keeps computer files with data collected through dactylography during internal profiling of the persons.

1.11 The questionnaire with questions related to this letter was mailed to the Financial Action Task Force (FAFT) in April of 2002 (see Annex 1). But please note that the responses to the FAFT-given questions were provided on basis of the criminal laws that presently are not effective.